85-1870

Supreme Court, U.S.
FILED
APR 22 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

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MARVINE ALICE COMSIA

PETITIONER

V

RUDY MAGNONE, ET AL

RESPONDENT

---

PETITION FOR SPECIAL WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT..NATIONAL AUTHORITY

CHIEF JUSTICE OF THE UNITED STATES

CONGRESS OF THE UNITED STATES

PRESIDENT RONALD REAGAN

---

MARVINE ALICE COMSIA, PRO SE
1555 SENECA AVE. SOUTH
ALLIANCE, OHIO 44601
(216) 821-4189

## QUESTIONS PRESENTED FOR REVIEW

(I) Whether private persons (HomeOperators ) doing business with the State (under contract ) or with the State Agents, being in a position of trusteeship ( Care of the Handicapped ) hold the Sovereign Power ( The State of Ohio ) accountable if the Sovereign chose not to be held accountable ?

(2) Are private persons (Home Operators) injured when dismissed without cause, denied rights to defend themselves against false accusations ?

(3) If so, could the private person's (Home Operators),shamed in the Community, oppressed and constrained, claim to be injured, if this position is removed from them ? (License to Operate.)

(4) Does a person have the right to a reasonable and fair trial, right to face one's accusure's in open Court, right to be tried by an impartial Jury?

(5) Has the agency violated its own Rule's of Proper Procedure ?,gone beyond the Authority marked out by Congress?,has it denied person's Constitutional right ?

(6) Have the Local and State Governmental officials taken unto themselves so much Power that they

have usurped the reserved Powers, undermined THE WHOLE AMERICAN SYSTEM ?

(7) Have the Ohio Constitutional Laws, in excess protected these Officials and Agents, more so than the Citizens rights of protection of Life, Liberty, Property, and the Pursuit of Happeness.... due to the very self-incriminating evidence of abuse and wrong doing amongst their own purview ?

(8) Is Officials Prossessed by Virtue of State Law and made possible only because wrongdoer is clothed with Authority of State Law, and under Color of State Law, excluded from prosecution, for wrongful Acts of Malicious Abuse of Process ?

(9) Can Laws be passed, putting into effect Rules thus eliminating our right to work, through a penalty which was not evident prior to their taking control of small Homes?

(IO) Can they change the purpose of a State Organization, Mental Retardation, into an enity of its own pursuits, monoplizing the direction of the private family oriented Home Operators, secondly in pursuit of financial gain by fraudently creating small Homes in their own behalf, while requiring

extraordinary demands for the existence for the family provided individuals small Homes, making it impossible to complete, pursuant not unlike in violation of Anti-Trust, invisible from the publics eye ?

Prefix

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I

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OCTOBER TERM 1985

NO. _____

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MARVINE ALICE COMSIA,

PETITIONER

V.

RUDY MAGNONE, ET AL,

RESPONDENTS

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PETITION FOR SPECIAL WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
CHIEF JUSTICE OF THE UNITED STATES
PRESIDENT RONALD REAGAN
CONGRESS OF THE UNITED STATES

The Petitioner, Marvine Alice Comsia, respectfully prays that a Special Writ of Certiorari issue to review the Judgement of the United States District Court for the Northern District, Eastern Division, Case entered, I2/2I/8I. This Case demands immediate

attention, due to the urgent pressing need for the NATIONAL AUTHORITY to step in and take immediate Action. This Case is of NATIONAL IMPORTANCE.

## OPINION BELOW

The District Court entered its Memorandum decision affirming the denial of Petitioner's Motion of Objection not to dismiss on II/29/85. A copy of the Memorandum is printed in the Appendix hereto. infra, at pages 3I to42 as Appendix A. filed II/4?85.

The Court further denied Petitioner's Motion of Objection of not to dismiss, Jan.23/86. A Copy is printed in the Appendix hereto, infra, pages 42 to 44 as Appendix B.

## JURISDICTION

On Jan. 23/86... The District Court, Northern District of Ohio, Eastern Division, denied Petitioners Motion of Objection of not to dismiss. On Nov. 4th./85, the U.S. District Court also affirmed Judgement Entry... Ordered, adjudged,

and decreed that the pleadings filed by Plaintiff Comsia, 5/20/85, 5/24/85, 6/14/85, and 7/5/85, as Amended Complaints, to be stricken from the record, dismissing actions against the Parties added, necessary to the Amended Complaint, reasons set forth in the Memorandum Opinion filed Nov.4th./85, App.A.... Jan 23/86 the District Court further denied Petitioner's Motion of Objection not to dismiss, filed II/29/85. Rule 23 (I), (d), Request Review... too voluminous to reprint..."Complaint". This Case is Docketed in the Sixth Circuit Court of Appeals, U.S. Cincinnatti, Ohio, # 85-4060, the Appeal to be filed by 3/12/86.

This Case is of such imperative public importance as to Justify the deviation from normel appellate processes and to require immediate settlement in this Court. Plaintiff Comsia's Reorganized Amended Complaint, filed 7/5/85, is her Amended Complaint made definate and certain, due to Parties Defendant asking that I do so. The Order dismissing the Case is erronously taken, due to the

Caption Heading erronously marked, but is a Motion of Objection of not to dismiss. The District Court failing to faithfully execute Justice in as much as Deniel to defend self in an Open Court, to face ones accuser's, to produce documented evidence, question defendants, subpoena witnesses, and to repsent self is Denial of rights. F.R.C.Rule,4I.II.... holding that dismissal for failure to attend a pretrial conference was, under the circumstances, too drastic and a clear abuse of the District Courts discretion. And the District Courts dismissal of a Case was reversed as too severe a penalty, since the failure was due to his negligence, not RESCALITRANCE .... Link V. Wabash R, Co. (I962) 370 U S 626,82 S CT I386,8L ed2d 734. The Jurisdiction of this Court is invoked under Title 28, U.S.C. #I65I(a) or 28 U.S.C. #224I....

## Chapter 4

# OTHER NATIONAL POWERS IN THE 1787 CONSTITUTION

**10th ED., p. 213**
**Add to footnote **:**

On the uniformity requirement, see United States v. Ptasynski, 462 U.S. — (1983), discussed below, addition to 10th Ed., p. 356.

**10th ED., p. 224**
**Add as footnote at end of Note 2:**

On the necessity of ascertaining congressional purpose to determine if a tax violates the Uniformity Clause, see United States v. Ptasynski, 462 U.S. — (1983), discussed below, addition to 10th Ed., p. 356.

**10th ED., p. 287**
**Add to first paragraph of Note 2:**

PENNHURST STATE SCHOOL v. HALDERMAN, 451 U.S. 1 (1981), suggests that the modern Court may be growing more reluctant to interpret federal-state grant programs as including conditions imposing affirmative obligations on the states. The case involved a grant program established by the Developmentally Disabled Assistance and Bill of Rights Act of 1974. Under the program, Congress provides funds to participating states to aid them in programs for the care and treatment of the mentally retarded. The Act's "bill of rights" provision states that mentally retarded persons "have a right to appropriate treatment, services, and habilitation" in "the setting that is least restrictive [of] personal liberty." The plaintiffs claimed that this provision creates rights that are judicially enforceable by private parties. Justice Rehnquist's majority opinion, however, held that the provision "simply does not create substantive rights." In the course of reaching this conclusion, he made some potentially significant comments on the relevant sources of power—§ 5 of the Fourteenth Amendment and the Spending Power. (The Fourteenth Amendment aspect of the case is further noted below, addition to 10th Ed., p. 1104; Ind. Rts., p. 724.)

Justice Rehnquist assessed the Spending Power as follows: "[O]ur cases have long recognized that Congress may fix the terms on which it shall disburse federal money to the States. Unlike legislation enacted under § 5, however, legislation enacted pursuant to the Spending Power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the Spending Power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' [See, e.g., Steward Machine Co. v. Davis.] There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously.* By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation. [We] must carefully inquire, then, whether Congress in [the 'bill of rights' provision] imposed an obligation on the States to spend state money to fund certain rights as a condition of receiving federal moneys under the Act or whether it spoke merely in precatory terms." He concluded that the provision did "no more than express a congressional preference for certain kinds of treatment" and did not impose affirmative obligations on the states: "In sum, the court below failed to recognize the well-settled distinction between Congressional 'encouragement' of state programs and the imposition of binding obligations on the States. [Congress] was aware of the need of developmentally disabled persons and plainly understood the difference, financial and otherwise, between encouraging a specified type of treatment and mandating it."

Justice WHITE's partial dissent, joined by Justices Brennan and Marshall, insisted that the "bill of rights" provision *did* impose substantive conditions on the federal spending program: it "was intended by Congress to establish requirements which participating States had to meet in providing care to the developmentally disabled. The fact that Congress spoke in generalized terms rather than the language of regulatory minutia cannot make nugatory actions so carefully undertaken. [The provision] cannot be treated as only wishful thinking on the part of Congress. [It] clearly states rights which the developmentally disabled are to be provided as against a participating State,"

rights which the developmentally disabled can enforce in federal courts as private beneficiaries of the law. In implementing these rights, federal courts should determine what is "necessary to comply with the Act and then [permit] an appropriate period for the State to decide whether it preferred to give up federal funds and go its own route." And in a footnote replying to the majority's "contract" approach to grants-in-aid, Justice White commented: "None of the cases cited by the Court suggest, much less hold, that Congress is required to condition its grant of funds with contract-like exactitude."

* In a potentially important footnote at this point, Justice Rehnquist added: "There are limits on the power of Congress to impose conditions on the States pursuant to its Spending Power [e.g., Steward Machine Co.; Fullilove; see National League of Cities v. Usery]. Even the [plaintiffs], like the court below, recognize the 'constitutional difficulties' with imposing affirmative obligations on the States pursuant to the Spending Power. That issue, however, is not now before us."

**2.3 / Certiorari jurisdiction over courts of appeals—before rendition of judgment below.** It is expressly contemplated by §1254(1) that the Supreme Court may utilize its certiorari jurisdiction either "before or after rendition of judgment" by a court of appeals. And see 28 U.S.C. §2101(e), providing that "[a]n application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment." In Chief Justice Burger's words, "any case decided in any district court with a genuine need for swift review by the Supreme Court can be the subject of a petition for certiorari before judgment." [1] The chief requisite to the exercise of this power is that there be a case pending in the court of appeals, which means that a notice of appeal has been filed and that the certified record from the district court has been filed in the court of appeals. The appeal, in short, must have been docketed in the court of appeals. *Gay* v. *Ruff*, 292 U.S. 25, 30.

February 28, 1986

Ms. Marvine A. Comsia
1555 Seneca Avenue, South
Alliance, OH 44601

RE: Marvine Alice Comsia v. Rudy Magnone

Dear Ms. Comsia:

I have reviewed the papers which you have submitted and have been unable to identify any final decision of the U.S. Court of Appeals. Although your petition is directed to that Court. In the absence of such a decision, you have no reviewable order for this Court to consider on a petition for a writ of certiorari.

Very truly yours,

JOSEPH F. SPANIOL, JR., CLERK

By Edward C. Schade

Edward C. Schade
Assistant Clerk

cdd
Enc.

U.S. Department of Justice

WBR:AEP:JAV:eh
DJ 168-57-0

Washington, D.C. 20530

MAR 3 1986

Honorable Paul Laxalt
United States Senate
Washington, D.C. 20510

Dear Senator Laxalt:

This is in response to your correspondence of December 19, 1985 which was forwarded to this Division by the Office for Civil Rights of the Department of Health and Human Services. Your letter concerns allegations made by your constituent, Ms. Marvine Comsia, that abuse, neglect, fraud and corruption beset many of Ohio's residential facilities for handicapped persons.

The Special Litigation Section of the Civil Rights Division enforces the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997, which authorizes the Attorney General to initiate action on behalf of persons residing in publicly operated institutions which deprive them of their constitutional or federal statutory rights. We will carefully review the information provided by Ms. Comsia concerning the Northeast Ohio Developmental Center in light of the authority granted under 42 U.S.C. 1997. If we determine that a violation of federal law has taken place, we can assure you that appropriate action will be taken.

Thank you for bringing this matter to our attention.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: [signature]
Arthur E. Peabody, Jr.
Chief
Special Litigation Section

## CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV:

Nor shall any State deprive any person of life, liberty, or property, without due process of Law; nor deny any person within its Jurisdiction the equal protection of the Laws.

United States Constitution, Amendment X:

The Powers not delegated to the U.S. Constitution, nor prohibited by it to the States, are reserved to the people.

United States Constitution, Amendment, IX:

The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage other's retained by the people.

United States Constitution, Article VI:

This Constitution, and the Laws of the United States which shall be made in pursuance thereof... or which shallbe made, under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding.....

The senators and representatives beforementioned, and the members of the serveral state legislatures, and all executive and judicial officers, both of the United States and of the seveal States, shall bebound by oath or affirmation, to support this constitution;.....

United States Constitution, Amendment I:

Congress shall make no laws respecting..... or abridging the freedom of speech, or of the press, or of the right to petition the Government for a redress of grievances.

United States Constitution, Article III:

Sect.I. The Judicial power of the U.S. shall be vested in one Supreme Court.

Sect. 2. The Judicial power shall extend to all cases, in law and equity arising under this constitution, the laws of the U.S. ..... to all cases affecting citizens or subjects. In all cases affecting.... other public minidters and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all other cases before mentioned, the

supreme court shall have appellate jurisdiction, both as to law and fact, with such exception, and under such regulations as the Congress shall make.

United States Constitution, Article II:

Sect. I. The Executive Power shall be vested in a President of the U.S. of America.

Sect. 3. He shall take care that the laws be faithfully executed, and shall commission all officers of the United States.

United States Constitution, Article I:

Sect. I. All Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sect. 8. To make laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the Government of the United States, or in any department or office thereof.

United States Constitution, V:

This goes along with the Ilth. Amendment.

## STATEMENT OF THE CASE

(I) Plaintiff- Petitioner, Marvine Alice Comsia, had the right to be licensed by the Ohio Department of

Mental Retardation, to operate a residential care facility, for the care and habilitation of profoundly retarded children up, and until, said right was revoked on Nov.4/1981... Licensed, June of 1975, at 2800, N. Market, Canton Ohio, Stark County. In addition, Plaintiff-Petitioner Comsia, Oct. 19/1979, applied for a license, (same) at 385 West Ohio Ave, Sebring, Ohio a Home Plaintiff-Petitioner, purchased, 5/2/1979, after the attempted takeover of Canton-Comsia Fac. (2) All of the defendants, in their individual and official capacities, illegally conspired together with each other and with others persons knowen and unknowen, to deprive Plaintiff-Petitioner of her right accured by the Fourtheenth Amendment of the United States Constitution, to wit: the right of P-Petitioner not to be deprived of her property with out due process of law. Each defendant maliciously commited one or more acts in furtherance of such conspiracy. U.S. Cons., Amendment IX: The enumeration in the Cons. of certain rights shall not be construed to deny or disparage others retained by

by the people.... Article VI: the supreme Law of the land; and the Judges in every State shall be bound thereby,....and the members of the several state legislatures, and all executive and judicial officers, of the state, shall be bound by oath or affiramation, to support this Constitution.... . Amendment I: freedom of speech, or of the press, or of the right to petition the Government for a redress of grievances. Each defendant-Respondant, had knowledge that, in order to carry out the object of such conspiracy, it was necessary to cause willful and deliberate damage under color of state law to said rights of P-Petitioner, to be free from the deprivation of her property, except by due process of law. The acts alleged in the Complaint (Rule 23) to voluminous to reprint here) have been carried out in substantial part within the jurisdiction of this Court.

UNITED STATES CONSTITUTION, AMENDMENT X: powers to the People.... THIS CASE IS OF NATIONAL IMPORTANCE, DEMANDS IMMEDIATE ATTENTION, DUE TO THE URGENT PRESSING NEED OF IMMEDIATE ACTION. United States Constitution, Article VI: The Senators and Representat

ives before mentioned, and all Executive and Judicial officers of the U.S., shall be bound by oath or affirmation, to support this Constitution, Article III: Sect.I., the Judicial power of the U.S. shall be vested in one Supreme Court. Sect.2., Judicial power shall extend to all cases, in law and equilty arising under this Constitution, the Laws of the U. S. ..... to all citizens or subjects. U.S. Cons., Article I: Sect.I.: the Executive Power shall be vested in a President of the U.S. of America. Sect.3. He shall take care that the Laws be faithfully executed and shall commission all officers of the U.S.... U.S. Cons., Article I: Sect.I.: All Legislative Powers here granted shall be vested in a Congress of the U.S..... Sect8.: to make laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the U.S., or in any department thereof. (3) As a proximate result of said Conspiracy, and in order to accomplish its intended purpose of depriving P.-Petitioner of a substantial right secured by the Federal Cons. P.-Petitioner was harrassed and maliciously prosecuted with the object of intimidating and

cocring the P-Petitioner from seeking due process of law in defending self, in order to prevent the EXPOSURE OF ILIEGALITIES AND IMPROPRIETIES WITHIN THE PURVIEW OF THE OHIO DEPARTMENT OF MENTAL RET ARDATION. Said campaign was maliciously institut ed in bad faith in order to bring about the clos ing of the Canton-Comsia Facility, and the revoc ation of P-Petitioners License,so that the Facili ty's records would be closed.

(4) June 4/78, due to a fire at the Canton-Comsia Facility premises, P.-Petitioner Comsia was appr- oached by Siffrin, a non-profit agency, operating homes for Memtally Retarded, with a view of making the Canton- Comsia Facility a non-profit Facility, so that a Grant of $I55,000.00 could be obtained. The officials involved with M.R. had no intention of letting P.-Petitioner Comsia remain as Operator. In refusing to go along with this began the consp- iracy to close my records.

(5) The M.R. officials approved a lease on the Can- ton-Comsia Facility, a lease they themselves asked P.-Petitioner to acquire, Sept. of I979, of which I signed. Shortly after the M.R. officials,(and others)

began and continued a campaign of harrasment, by assertion of unstantiated complaints and allegations. Said campaign was maliciously instituted in bad faith in order to bring about the closing of the Canton-Comsia Home, and the revocation of license, in order to close the records of the Facility. The M.R. Officials ordered renovation made while the children were living in the home, Jan.80, which brought about the closing of the home, 3/2I/80. Allegations of abuse, endangering and destruction of the Facility. Pl-Petitioner Comsia had cared for one Child, IO years of age, Todd Petersburger, at that time. Todd was profoundly & severly retarded, suffering from a lung condition, requiring postural draining and suctioning for excess mucous. Todds Mother was in capable of caring for Todd and made arrangments with P-Petitioner to continue Todd's care. Even through Todd was a ward of the M.R. office, and knowing that Todd's mother could not care for Todd, the Mental Retardation failed to make any placement for him, in violation of their own regulations. On or about Aug.I/I980, P.-Petitioner Comsia was served with a summons, charging her with the crime of recieving a mentally retarded person for care, 385

West Ohio Ave., Sebring Ohio, to wit: Todd Petersburger in a residential care facility, not licensed under Sect. 4I23.I8 of the Ohio Revised Code, all in violation of Ohio Revised Code, 5I23.I9. Said trial was brought against P-Petitioner Comsia, by the prosecutor, Richard Ross, the Municipality of Sebring, at the request of the Mental Retardation. The day of trial, I2/22/80, The Pros. Ross asked me to sign that I would not hold him responsible.... I would not... the Judge never came into the Courtroom, Records were falsified as to the Case. Between the institutions of said proceedings on Aug. I/80, (TODD) and their final determination on Dec.22/80, hearings were held on the revocation of the License for the Canton-Comsia Home...On Aug.I5/2I/ and Sept.5th.,2Ist. of I980. At said hearings, P-Pet. Comsia was represented by Attorney Michael Donovan, Executive Director of the Human Services Law Center, Columbus, Ohio. During the course of the hearing, when P-Pet.Comsia insisted on testifying as to the involvement of the Siffrin Home Proposals in her difficulties, said Donovan got upset, and subsequently when P-Pet. Comsia

tried to so testify, Donovan and the Hearing Offi cer caused the Hearing to be terminated, and P-Pet Comsia to be removed. Att. Donovan refused to prep are the Brief. P.-Pet. Comsia there upon went to Defendant Magnone and advised him of the circumstances surrounding the Siffrin proposal, the cir- (surrounding) cumstances, a matching Grant to the M.R. office, for an I.C.F. MR FAcility, operated by Irene Shrewsberry, and the removal of Shrewsberry from her home. In early Oct., arrangments were made by the Office Representative David Johnson with Defendant Magnone for a meeting on either II/4/8I, or on II/I0/8I, between Repres. Johnson, P-Pet. Comsia, Pet. Comsia's Counsel, Att. Crede Calhoun, with references to the pending Canton*Comsia Facility proceedings. Subsequently, Defendant Magnone's office advised Repres. Johnsons office that the meeting would be held, II/I0/8I,at I:30 p.m. On II/9/8I, Defendant Magnone's office advised Repres. Johnson's that the meeting would not be held, and denied that arrangements were ever made for such a meeting. Nov. 4th./8I, Defendant Magnone sent a

letter, addressed to P.Pet. Comsia, at an address where P.-Pet. was no longer residing, even through the proper Add. had been given to Magnone's Secretary, Susan Wiley. Included therein an adjudication order, signed by Defendant Magnone, revoking license. Defendant Magnone, maliciously caused said adjudication order to be issued and mailed, after said meeting was scheduled, well knowing that Plaintiff-Petitioner and her Att., once a meeting had been scheduled, would take no further action with regards to protecting Petitioners rights, mailed it to the wrong Address, all with the deliberate intentions and purposes of preventing and frustrating an appeal, to the Common Pleas Court, and depriving Petitioner of due process of law in order to protect the Ohio Department of Mental Retardation from the possibility of the discovery and exposure of illegalities & improprieties. P-Pet. Comsia has no adequate remedy under Ohio Law, to protect her property without due process of law under the United States Constitution.

Persons within the Municipility of Sebring, Ohio, Officials, Judges, Police, Local Agents have taken

part in this Conspiracy, too numerous, too voluminous to reprint here, BUT, Rule 23..Request that they be reviewed.

P-Pet. Comsia, and Lowell Stroup, A Mental Patient who made his home with me,... were falsely arrested jailed overnight, in order that the former owners could regain control of the Sebring Property,... on charges of stealingmy own stuff,,, On this Case,too, I was asked to dismiss it.

FROM THE SIXTH CIRCUIT COURT WRIT TO BY
FROM THE SIXTH CIRCUIT COURT, WRIT TO BYPASS

May (or June) of I975, prior to being Licensed, a 9 year old boy, was placed in my home, by M.R...Sect. 5I23.I9, the Department violated its own rules, in as much as THEY were in the process of Licensing the Home. Home was not licensed till Sept. I/I975. This child John Starr, was temporary staying at the Fairmount County Home, which was being run by the County Commissioners at that time, as a place for juvenile delinquents. This child was brought at I2: 30 p.m., and died at 4:30 A.M. They told me they were not going to tell his mother , as she had not visited him much.... Yet they tried to take me to Court, on having Todd Petersburger in an unlicen-

sed Facility.

Andy Scalia, a resident of the Comsia Home, died, May 23/1978, (just before the Fire at the Canton-Comsia Facility, June of 1978.) in his bed at night... I refused to take back, Tony Leone, a child who was destructive, and many times,I had warned the Officials to the fact. I had to have a Lawyer send a letter to the Department, that I did have to accept him back into the Home, as the Agents told me... I had to.

Rule 5II9:3-3-II (B5).... One Ricky Smith, A non-Ambulatory person around I7 years of age, when he entered the Home, was there until the timeof the fire, at which time,I had to have the lawyer send too, on him, that I didnot have to take him back. You could stand him (Rick) up, he would not walk, hardly at all, he would just go down on you. As result on Tony Leone.. His mother and her friend, Doctorette Ruth Roberts, from Mental Retardation, made up the story of the dead body in my yard, at 5 A.M.... The night Andy Scalia died. This too, letter from Lawyer.

BEST AVAILABL



. LAW AN ARGUMENT --- STATEMENT OF FACTS

I. THE TESTIMONY AT THE HEARING SHOWES BY A PREPONDERANCE OF THE EVIDENCE THAT THE RULES AND REGULATIONS CITED IN THE COMMISSIONERS LETTER WERE VIOLATED BY THE DEPARTMENT ITSELF.

The testimony at the hearing shows that the rules and regulations cited, to wit:

Sect. 5123.19 - NO PERSON SHALL RECIEVE A MENTALLY RETARDED PERSON FOR CARE IN A RESIDENTIAL CARE FACILITY UNLESS SUCH FACILITY IS LICENSED UNDER SECTION 5123.18 OF THE REVISED CODE.

Johnny Starr was placed in the Home prior to Licensing, 5/23/75... Home Licensed 9/1/75.

Sect. 5123:2-3-05. RESPONSIBILITIES OF THE DEPARTMENT.

(A) APPROPRIATE INSPECTIONS SHALL BE ARRANGED BY THE LICENSURE OFFICE WITH THE APPROPRIATE INSPECTING AUTHORITY. REPORTS OF APPROVED INSPECTIONS SHALL BE FILED WITH THE DIRECTOR PRIOR TO ISSUANCE OF LICENCE VERIFYING THAT EACH RESIDENTIAL CARE FACILITY HAS PASSED:

(1) A BUILDING SAFTY INSPECTION.

(2) A HEALTH INSPECTION.

(3) A FIRE SAFETY INSPECTION.

(B) EACH RESIDENTIAL CARE FACILITY SHOULD RECEIVE ANNUALLY A HOME STUDY FROM THE REGIONAL OFFICE WHICH

E COPY



INCLUDES A RECOMMENDATION REGARDING LICENSURE. Don Afamson testified the Home was never properly repaired after the fire. Yet the Home was passed by the department and Local Authority, Children placed back, 8/29/78. Department knowing full well the extent of the massive renovation going on (in Feb. 4/80, till closing on Mar.21/80) Local Authority Aware, left the residents in this life threatening situation, until Appellants Attorney called and demanded that something be done. Department officials and Local Authority in & out of the Residence while this was going on...(Testimony from Transcripts of State Hearing) M.R. OFFICIALS having the Rental Contract, stating the Renovations. Local Authorities giving permission to do the work, while the children were living there. Suzan Gergye Farage, issuing the demand to Leland Cope to start the work, or home would be closed in 15 days. Sect. 5123.20: Appropriate LOCAL GOVERNMENTAL OFFICIALS OR BODIES ARE GOVERNED BY CHAPTER 119 OF THE REVISED CODE.

3.I.5. ... THE APPOINTED HEARING EXAMINER WILL CONDUCT THE HEARING.... Wayne Sheppard was aware I Wanted to tell of the true Status of the closing

of my Home.... He refused ,e. (In Transcripts).

IN THE AMENDED COMPLAINT FILED 7/5/85

P-Appellant Comsia, alleges this causative link to injury which is direct, rather than incidental. That Proprietary Homes such as my self, doing business under contract with M.R.D.D. was in the target a rea of the M.R. Agents in as much as the program was implemented by the Legislature and Congress to place the residents out into the Community Home setting, whereby exposing the Charade of persons of the Depa rtment of Mental Retardation, under cover of their State Office, held, pursuant not unlike in violation of Anti-Trust, invisible from the public's eye. They have changed the purpose of a State organization, Mental Retardation, into an entity of its own pursuits, monoplizing the direction of the private family oriented Home Operators, secondly in pursuit of financial gain by fraudently creating small Homes in their own behalf while requiring extraordinary demands for the existence for the family-provided individuals small Homes, making it impossible to complete. Added to this, allegations which had not truth

to them, were used against the Homes, producing harrasment from neighbors and officials who unknowing went along with those allegations, creating severe hardship to the Operators...foreclosures... revocations of Licenses to an end that brought shame and disgrace of the Operators standing in the Community. The Conspirancy organized, the motives involved... spurlious contracts between Corp's., profit and non-profit, between them and the Agency, are further proof of violation of the Anti-Trust Laws. the carry over into other States by former Agents of M.R. The Corp's. proximity to the State, its exercise of the privilege of conducting activities & the occurrence of the injury to the P.-Appellants continue to be disabling, or can be expected to be disabling. The regulations imposed upon Propietary Homes are not in harmony with the Statute. These regulations ( THE ADMINISTRATION OF A STATUTORY SCEME, FRUSTRATES THE BILL OF RIGHTS ACT-1974 & THE CONGRESSIONAL INTENT, IT EXCLUDES ELIGIBILITY IN THE PROJECTS THE VERY PEOPLE CONGRESS MANDATED A PREFERENCE BE ACCORDED.) The Agency is promulgating

the eligible rules to their own betterment, for their own purview, thus producing unreasonable restraints of competition, or the creation of a monoply.

At the Senate Sub-Committee investigative hearings, Senator Phiefer said they were in fact thinking of taking a different route... one of removing the private Proprietary Homes, such as my self. The Civil Rights Act of 1964 included State & Local Governments as well as Federal Government as employers under the Act. Status is (I) Affirmatively... (2) Purposefully... (3) Actively fostering Discrimination. State has power to affect all private Action.

Sect. 5123:2-3-30: RESIDENTS RECORDS: DONOVAN, SHEPPARD, SANTELLANI, TALKED OVER THAT = each item in my records would have to be DOCUMENTED & GONE OVER, all three decided the file was to time consuming, and Donovan did not produce the Documents. This file contained all the records and programing to prove I did keep records.

5123:2-3-29: RESIDENTS RIGHTS VIOLATED.

5123:2-3-I:(A) "ABUSE" MEANS ANY ACT OR ABSENCE OF ACTION INCONSISTENT WITH HUMAN RIGHTS OR COULD RESULT

IN PHYSICAL INJURY TO A RESIDENT....
DEPARTMENT OFFICIALS AND LOCAL AUTHORITY CONDONED THE RENOVATION AND FAILED TO ACT.
(G) " AUTHORIZED AGENT " MEANS ANY PERSON AUTHORIZED BY STATUE, CODE, OR RULE OR APPOINTED BY THE DIRECTOR TO PARTICIPATE IN THE INSPECTION, REGULATION, AND LICENSURE OF A RESIDENTIAL CARE FACILITY.
SECT. 5I23.I9 -- The Municipility of Sebring,M.R. Agents, The Pros. all took part in the False Case they brought against me, for keeping Todd Petersburger, when they abandoned him, the Judge and the records were falsified, as to the outcome of the Case... (THERE OWN ACTIONS WITH JOHN STARR.) The fraudulant takeover of my Home ATTEMPTED,.....
Suzan Farage, Don Adamson, John Richards, testified as to the Department interested. (TRANSCRIPT)
PLAINTIFF-APPELLANT, marvine Alice Comsia, under Sect. 5I23.I8, 5I23.I9 and 5I23.99 of the Ohio revised Code and the Regulations and Standards adopted 9/I/76, and Rules adopted I0/3I/77.....
was the Holder of a License, had the rights to be Licensed, by the Ohio Department of Mental Retardation, to Operate a Residental Care Facility, at

2800 , North Market, Canton, Ohio for the care and habilition of severly profound retarded children, up & until said right was revolked on Nov. 4th/81.

REASONS FOR GRANTING THE WRIT.

In attempting to straighten this out, P-Pet. Comsia pleaded, begged every Office here in Ohio, to look into this and do something about what was going on. Every office in the Ohio General Assembly was contacted. Civil Rights. All to no avail. Branching out to Offices in Washington, Civil rights, F.B.I., the Health and Human Services, the U.S. Justice Department. There seems to be no one in charge, to stop all this, and execute their duty. P.-Pet. Comsia, tried repeatedly to reach Gov. Celeste, (also Gov. Rhodes) through their offices, through the Ohio General Assembly, they failed to execute their duties, to stop this conspiracy, this fraudulant takeover of Homes, to reprimand the offices within their domain. The misuse of Government Power against the Citizens of the United States. Other Home Operators have no way of sustaining their Homes against the Power of M.R. The Past speakes for itself, inas much as, WE HAVE NOT BEEN ALLOWED TO TESTIFY IN THE COURTS, BEFORE THE SENATE SUB-COMMITTEE, I WAS STOPPED, YET The Legis-

lature wants to pass a Law that the Mental Retard-
ation can take over Homes that have abuse in them.
What about their closing us in the past with false
allegations, even on suspected allegations??? How
can we defend ourselves in the future??? THE REAL
ABUSE OF THE HANDICAPPED WAS WITHIN THEIR OWN PU-
RVIEW. I ask that the Power invested within the U.
S. CHIEF JUSTICE, THE PRESIDENT RONALD REAGAN,THE
CONGRESS OF THE UNITED STATES OF AMERICA... REVIEW
THIS CASE FOR FINAL DETERMINATION, FOR THE PROTE-
CTION OF HOME OPERATORS,FOR THE COMMON CITIZEN OF
THE UNITED STATES., WHO ARE VIOLATED OF THEIR RIGHTS,
GUARANTEED UNDER THE CONSTITUTION OF THE UNITED
STATES, AGAINST THE MISUSE OF THE SOVEREIGN POWER.
I ASK TO BYPASS THE CIRCUIT COURT OF CINCINNATTI,
OHIO, DUE TO THE NATIONAL URGENCY OF THE SITUATION
INVOLVED. TO HAVE THIS CASE BROUGHT PROMPTLY TO
THE UNITED STATES SUPREME COURT, CHIEF JUSTICE OF
THE UNITED STATES, PRESIDENT RONALD REAGAN, ALL OF
CONGRESS TO REVIEW AND TAKE ACTION.
THEY PROCRASTINATE THROUGH NUMEROUS PROCEDURES
WHICH USUALLY END UP AS DENIAL OF JURISDICTION,
AND THEN WHEN HARD PRESSED, THEY HAVE SOME OTHER
LOOPHOLE THAT THEY HAVE CREATED TO ESCAPE IT ALL

BEST AVAILABLE COPY



TOGETHER. THE WAITING GAME HAS TURNED INTO YEARS, WITHOUT ANY METHOD OF RECOURSE AT ANY LEVEL.... NEVER SETTLED.... SO I PUT TO YOU THIS..... YOU ARE THE UPPERMOST LEVEL OF AUTHORITY. IT IS YOUR DUTY....TO PROVIDE A RESOURSE FOR MISJUSTICE IN SUCH A MATTER THAT THE COMMON CITIZENS'S RIGHTS SHALL BE PROTECTED AND GUARANTEED IN ACCORDENCE WITH THE CONSTITUTION.

## CONCLUSION

For the foregoing reasons, P.-Pet., Marvine Alice COMSIA, respectfully requests that a Special Writ of Certiorari issue to review the Judgement of the District Court, Northern District, Eastern Division dismissing the dismissal, by pass the Circuit Court Cincinnati, Ohio, due to the National Importance, that immediate action take place... Asking that the National Authority step in, secure are rights, against abuse of power used against us. A way for the Common Citizen to receive rightful Justice. We are asking that the Court adjudge and decree in a manner which would insure the continence and provide the intended funding of the family provided group homes.

Also providing means whereby protecting against the reoccurence of State Officials, or any person, or such an incident that would enable them to use their influence to control family provided group Homes, for want of personal gain. Blocking any attempt to close the field to people herein represented, as the private family oriented home operators..... THAT.....

NEW LAWS BE MADE, AGAINST THE ABUSE OF SOVEREIGN POWER OF THE COMMON CITIZENS OF THE UNITED STATES. THAT A WAY BE MADE FOR THE COMMON CITIZEN TO BE ASSURED ... THERE IS A WAY.

SUNSHINE LAWS, THAT THE COMMON CITIZEN CAN SPEAK AND BE HEARD... AND RECEIVE TRUE JUSTICE.

FOLLOWING MEMORANDUMS, ORDERS JUDGEMENTS AND DISMISSALS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED NOV. 4/1985

MARVINE ALICE COMSIA
PLAINTIFF
VS
RUDY MAGNONE, ETAT
DEFENDANTS

CASE NO. C81-2532Y

MEMORANDUM OPINION

This action brought pursuant to 42 U.S.C.#1983 was commenced on Dec. 21/1981, by filing of a complaint by Attorney Crede Calhoun on behalf of the Plaintiff. The four named defendants filed an answer on January 26,1982. Nothing further happened with respect to this case until July 7/1983, when a pre-trial was scheduled. On July 12,1983 the Defendants moved for a continuance of the pre trial. On February 22/1985, with no intervening action other than the scheduling of the pre-trial which apparenty was not held, the case was transferred from the docket of Judge Robert Krupansky to the docket of Judge Frank Battisti. On March 6, 1985 this case was reassigned to this Court

which issued its standard discovery order and scheduled a status call for June 6/I985. Although the Court's docket does not reflect the fact, the Court was notified that Attorney Crede Calhoun had withdrawn from the case. The plaintiff has been representing herself in a pro se capacity since the case was reasigned to this Court. The Court then rescheduled the status call for April I6/I985 and conducted same. In the interim, the defendants filed on April IO,I985 a motion to dismiss or in the alternative for judgement on the pleadings. As a result of the status call, the Court granted plaintiff leave until May 20/I985 to file a responce to the motion to dismiss or in the alternative to file an amended complaint.

Begining with May 20/I985, the plaintiff, acting in her pro se capacity, has filed a series of pleadings as follows:

A. On May 20,I985 (docket entry #24) a partial amended complaint brought pursuant to 42 U.S.C. # I983 was filed.

B. On May 24/I985, (docket entry #26) a docu-

ment was filed and styled " supplement to amended complaint."

C. On June 14,1985,(docket entry #28)a document was filed and styled"Supplement to: amended Complaint, add parties, & request for class action, now makes a motion the class action a antitrust class action. Jury trial demanded. And Motion that District Court take jurisdiction over case's (sic) No.81-CV-1068,82-CV-43 that have arisen from actions of Mental Retardation."

D. On July 5/1985 (docket entry #35)a document was filed and styled "Motion:antitrust class action to reorganize amended complaint of 5/20/85 and supplements. Add new evidence recently discovered. Add amount of damages to amended complaint. District Court take pendant jurisdiction over cases: No.81-CV-1068, 82-CV-43 that have arisen from out of actions of Mental Retardation, jury trial demanded hereon (sic)"

E. OnJuly 11,1985(docket entry#40)a two page document was filed and styled "Motion..void... typing mistakes.. add to venue 28 U.S.C.A.(sic)

remove mistake of two parties..averment change No 5."

F. On July II, I985(docket entry #4I) a document was filed and styled "Motion --Writ of Mandamus, Removal of Judge off Case No.8I-CV-I068, Case No.82-CV-43, Remove to another county an command the performance of case No. 8I-802-02."

G. On August I4, I985(docket entry#56), a document was filed and styled "Motion to submit reorganized amended complaint filed 7/5/I985."

The documents filed by the plaintiff beginning with May 20/85, have joined numerous additional parties. Many of the additional parties have filed motions for dismissal or in the alternative for an order requiring the plaintiff to make her complaint definite and certain.

The Court has examined the various pleadings filed by the plaintiff beginning with May 20 consists of I2 pages and ends with paragraph 43 and then the penned notation of the plaintiff that additional pages to come on 5/21/85. No prayer for relief is included.

. The Court has examined the various pleadings filed by the plaintiff beginning with May 20,I9 85 and finds as follows:

I. The pleadings filed on May 20 consists of I2 pages and ends with paragraph 43 and then the penned notation of the plaintiff that additional pages to come on 5/2I/85. No prayer for relief is included.

2. The pleadings filed on May 24,I985 has one page of substantive material as set forth in Appendix#I.

3. The pleading filed on June I4,I985 begins with page 20 and paragraph 77 and contimues through page 33 and then includes two additional pages. The last numbered paragraph is#I27, there is no specifically designated prayer for relief but the last page might be liberally construed to constitute a prayer. See Appendix #2. In this document the plaintiff has converted her action from one taken pursuant to 42 U.S.C.#I983 to an action for relief based upon antitrust violations.

4. The pleadings filed on July 5/I985 purports to be a second amended complaint in that the paragraphs are numbered I throughI38 on 39 separately numbered pages. Unlike the previous pleadings, this document contains a designated prayer foe relief. See Appendix #3. The document filed on July 5/I985 no longer seeks damages pursuant to 42 U.S.C.$I983, but rether is styled a class action brought in an antitrust action.

5. The Motion for a writ of mandamus (docket entry #4I)appears to be an action seeking an order from this Court to remove a Mahoning County Judge from two State actions and also to require that a pending common pleas Court action in Stark County be brought to trial pursuany to a federal court order.

The Court is mindful of the requirement that pro SE complaints are held to "less stringent standards than formal pleadings drafted by lawyers." Haines V Kerner, 404 U.S. 5I9,520(I972). Moreover allegations in pro se complaints must be taken as true and construed in favor of the plaintiff.

Westlake V. LUcas, 537 F.2d 857,858(6th.Cir./76).

Against these mandates the Court has examined thevoluminous pleadings filed by the plaintiff in her pro se capacity since she was given leave to file an amended complaint.

The documents represented by the pleadings filed on May 20, May24 and June I4 represent an incomplete effort to file an amended complaint for which leave had been granted. Moreover the June I4 pleading attempts to convert a 42U.S.C. #I983 action to an antitrust action, given the gap in the numbered paragraphs 43 to 77 in the three pleadings filed May 20,May24 and June I4, and the absence of a definitive prayer for relief, the Court finds the combination of the three pleadings to be incomprehensible. The Court, on its own motion, stricks the May 20, May24, and June I4 pleadings from the record because taken together, the three pleadings are incomplete, incomprehensible, change the nature of the action, and contain redundant, immaterial and impertinent matter. See Rule I2(f) Federal Rules of Civil Procedure.

The pleading of July 5,1985 was filed without le ave of Court, The document filed August 14 styled "Motion to submit reorganized amended complaint, filed7/5/85 "was a pparently filed as a belated effort to obtain leave to file the July 5 " reorganized amended complaint", Had leave of court been timely requested with a copy of the proposed amended or "reorganized " complaint, it would have been den ied. It is inappropriate to use an amended complaint as the vehicle to convert an action sounding under 42 U,S.C. #1983 to an action for class action relief sounding in a claimed violation of the Sherman Antitrust Act. The Plaintiff may wish to file a seperate action sounding inAntitrust, but the Court will not accept an antitrust case in the guise of an amended complaint in a #1983 action. The July 5, 1985 pleading is ordered struck from the record on the Courts Motion.

The document styled "Motion for writ of Mandamus" (docket entry #41), is dismissed for want ofsubject matter jurisdiction.

As a consequence of the Court's rulings contained in this Memorandum Opinion, only the initial complaint filed on December 21,1981 remains before the Court. The action against the newly named defendants, i.e. Minnie Fells Johnson, Director, Mental Retardation; Suzan Gergye Farage; Don Adamson;John Richards;Michael Donovan; Sebring Municipality; Ralph Mureth; Michael Pinkerton; Richard Watkins; Larry Lind;Richard Ross;Mrs. Robert Wilken;Allen Larkin;Alvin Karli; Robert Wilkin;Thomas Burkhart;Marlene Burkhart; Frances Marini;Dennis Devies;Paul Freer:Hugh Tayler,Jr.;Judge Fred Baily;Judge Michael A.Gerchak; Judge Joseph Betras;Canton City Health Dept; Fire Prevention Bureau; Building Inspection Dept;John Smith;Alan Wayne Sheppard;William Clark;Dave Greotzinger;Michalene Hughley;Steve McPeake;Ian Blaine;Edward Stokes; will be dismissed without prejudice.

Pursuant to the provisions of Rule 54(B) of the Federal Rules of Civil Procedure, the Courts order striking the above described attempts to amend the complaint and dismissing the plaintiffs application for a writ of mandamus will contain a statement that the Court finds no just reason

for delay. In this Courts opinion the plaintiff will have thirty(30) days from the filing of the judgement entry to perfect an appeal with respect to the dismissal.

The plaintiff is granted leave until Nov.29, I985, to file a brief in responce to the April IO,I985 motion of alternative for judgement on the pleadings.

IT IS SO ORDERED.

Signed by
David D.Dowd,Jr.
U.S. DISTRICT JUDGE.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Filed II/4/85

MARVINE COMSIA, PLAINTIFF

VS

RUDY D. MAGNONE, et al, DEFENDANTS

CASE NO C8I-2532Y

JUDGEMENT ENTRY

For the reasons set forth in the Memorandum Opinion filed contemporaneously with this Judgement Entry, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the pleadings filed by the plaintiff on May 20, I985, June I4, I985 and July 2, I985

as amended complaints are stricken from the record and the plaintiffs action against the following named defendants is dismissed without prejudice:Minnie Fells Johnson;Director,Mental Retardation;Suzan Gergye Farage:Don Adamson: John Richards; Michael Donovan;Sebring Municipality;Raph Huerth;Michael Pinkerton;Richard Watkins;Larry Lind;Richard Ross;Allen Larken: Alvin Karli;Robert Wilkin;Mrs.Wilkin;Thomas Burkhart;Marlene Burkhart;Frances J.Marini; Dennis Devies;Paul Freer;Hugh Taylor,Jr; Judge Fred Bailey;Judge Michael A.Gerchak; Judge Joseph Betras;Canton City Health Dept.; Fire Prevention Bureau;Building Inspection Dept.;John Smith; Alan Wayne Sheppard;William Clark;Dave Greotzinger;Michalene Hughley; Steve McPeake;Ian Blaine:Edward Stokes;. The Plaintiffs Motion for writ of mandamus,filed on July 5/85, is dism issed for lack of subject matter jurisdiction.

The Court finds no just reason for delay. See Rule 54(B) of Federal Rules/Civil Procedure.

The plaintiff is granted leave until Nov.

29/I985 to file a brief in responce to the Motion of the original four defendants to dismiss or in the alternative for judgement on the pleadings.

signed
David D.Dowd,Jr.
U.S. District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
FILED I/23/I986

| | |
|---|---|
| MARVINE COMSIA, PLAINTIFF | CASE NO. C8I-2532Y |
| VS | JUDGEMENT ENTRY |
| RUDY D. MAGN ONE,et a l DEFENDANTS | |

On April IO,I985,the defendants Rudy D,Magnone, Robert Melcher, Peter P. Polloni,and James R. Flewellyn filed a joint motion to dismiss on several grounds. First, the defendants contended that the plaintiff had failed to prosecute her action in I98I. In support of that claim the defendants pointed to the fact that the plaintiffs claim against the defendants had been virtually

ignored by the plaintiff after it was filed in December of I98I. No discovery was undertaken and the plaintiff acquiesced in the lack of attention given the case by the judges to whom the case had previously been filed.(This case was re-assigned to this Court on March 4,I985.) Additionally, the defendants claim alternatively that the complaint should be dismissed because it fails to state a due process claim under existing law.

The plaintiff has not filed a brief in opposition to the motion to dismiss, The Plaintiff did attempt to file an amended complaint. However, by a judgement entry filed November 4,I985 the amended complaints were stricken from the re cord. Additionally, by the judgement entry of November 4,I985, the Court granted the plaintiff leave until November 29,I985 to file a responce to the April IO,I985 motion to dismiss. No brief has been filed nor has the Plaintiff requested leave to delay filing the response brief to the m otion to dismiss.

The Court finds the motion of the defendants

Magnone,Melchor,Polloni and Flewellyn to dismiss well taken on both grounds.

The Motion to dismiss is granted. Case dismissed against the defendants Rudy D.Magnone, H. Robert Melchor, Peter P.Polloni and James R. Flewellyn with prejudice.

Each party to bear its own costs,

signed
David D.Dowd,Jr.
U.S. District Judge

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BEFORE THE OHIO DEPARTMENT OF MENTAL RETARDATION

IN THE MATTER OF COMSIA HOME
2800 Market Street
Canton, Ohio 44704 : CASE NO. 2-C-0314-A-76

MOTION TO DISMISS

The Department of Mental Retardation, by and through their attorney,the Attorney General of Ohio, William J. Brown, hereby moves this Court pursuant to Rule 41 (B) (C) of the Ohio Rules of Civil Procedure, to dismiss the above captioned matter for failure to prosecute and failure to comply with the Court order.

MEMORANDUM IN SUPPORT

Hearings were held pursuant to Chapter II9 of the Ohio Revised Code by hearing Officer Alan W. Sheppard to adjudicate the issue of license revocation of the Comsia Home , August I5,2I and Septmember 5,I980. Pursuant to agreement by the parties, closing arguments were waived in favor of submitting briefs to the Hearing Officer. On October 2I,I980, the brief of the Department of Mental Retardation was delivered to Hearing Officer Sheppard. As of the date of this Motion to Dismiss, no brief has been received from Counsel for Comsia Home,Michael Donovan. Counsel for the Department of Mental Retardation is unaware of any agreement or permission that would allow the passage of such considerable amount of time before receipt of Comsia Homes brief. Furthermore, Counsel for Comsia Home has failed to a bide by the order of Hearing Officer Sheppard, To Wit: that the responsive brief of Comsia Home be filed within ten (I0) days after receipt of the Department's brief,

Therefore, it is requested that this Motion to

dismiss pursuant to Rule 4I (B) (I) of the Ohio Rules of Civil Procedure be granted.

Respectfully submitted,

William J. Brown
Attorney General
signed

Lianne L. Santellani
Assistant Attorney General
State Office Tower
30 East Broad Street, 26th.Floor
Columbus, Ohio 4321I4
Telephone: 6I4/466-54I4

Rudy Magnone, Ph.D. DIRECTOR'S JOUNAL ENTRY

ADJUDICATION ORDER

IN THE MATTER OF: COMSIA HOME
2800 NORTH MARKET STREET
CANTON, OHIO 44714
CASE NO. 2-C-0314-A-76

TheDirector of Mental Retardation and Devlopmental Disabilities having notified the operator of the above named home by certified mail return receipt requested dated June 2,1980 that he proposes to issue an order revoking the license of said operator for the reasons stated therein and a hearing on said proposed order having been requested and completed as provided by Section 119,7 of the Revised Code and having considered the recommendations of the Hearing Officer, hereby revokes the license issued to said operator under Section 5123.19 (A) of the Ohio Revised Code to operate said home.

Signed
Rudy Magnone
Rudy Magnone,Ph.D.
Director
Department of Mental Retardation and Developmental Disabilities

November 4,1981
Date

I hereby certify this to be a true and correct copy of the Journal Entry of the Director of Mental Retardation and Developmental Disabilies.

Signed
Rudy Magnone
Rudy Magnone,Ph.D.
Director
Department of Mental Retardation and Developmental Disabilities

November 4,1981
Date

THE PARTIES

At all times specified herein, the following Defendants who were employees or served in the OHIO Office of the Department of Mental Retardation are so named, in their following capacities At all times Specified herein, the following Defendants are each, other than Mental Retardation Officials are each so named, in their own following capacities if knowen.

Rudy Magnone was the Director of said Ohio Dept. of Mental Retardation from approximately July of I980 to the time I982. Robert Melchor was Manager of the Youngstown Field Office of the Ohio Dept. of Mental Retardation; At present time Mr. Melchor is Mahoning County Consultant for Mental Retardation. Peter P.Pollini was Deputy Commissioner or Reginal Director of Region 5 of said Ohio Dept. of Mental Retardation, which included the Youngstown and Akron Field Offices; James Flewllyn was an assistant to Director Magnone. Minnie Johnson, is at present,(not Now ) the director of Mental Retardation in Columbus, Ohio. Suzan Gergye Farage=Liaison Representative for the Akron Office Don Adamson=Licensure Specialist for the Youngst

own office for a while & for the Akron Office. until Michalene Hughly became licensure Specialist for the Youngstown area. John Richards Case Management Supervisor for the Akron Office. Steve McPeake-Field Manger for Akron Office. William Clark-District Manager for the Akron Office, until he retired. Ian Blains.. Title uncertain... employed at the time of the fire at the Comsia Home (I978)... until time unknown. Dave Greotzinger, last known, employed as Director of the Siffirn Home... until ?? Larry Lind-Vice President of the Citizens Savings and Loan. All other known and unknowen, yet to be revealed. All Health, building, Fire, etc: Officials... delegated to pass inspections for the Comsia Group Home, Canton, Ohio...from June I978 until March of I980. Richard Watkins... Council Member for Comsia Home, 2800 N. Market..time of I979 till and I980... At present County Commissioner, Stark County. Michael Donovan, Executive Director of Human Services Law Center, Columbus, Ohio. Alan Wayne Sheppard-Hearing Officer and a Licensed Attorney-at-Law, Licensed to pratice in

Ohio. The following Defendants, each in his acting capacity as known... The Complete Municipility of Sebring, Ohio. Mahoning County Courtroom #3,...Judges... Judge Fred Bailey, Judge Michael A. Gerchek, Judge Joseph D. Betras. Ralph Muerth.... Mayor of Sebring I979 to I98I, at present Council Member. Michael Pinkerton, Present Mayor of Sebring, Ohio. Richard Ross... Prosecutor and Attorney..I979 till present time. Francis J. Marini.. City Solicitor and practicing Attorney..I979 till present. Dennis Devies.. Police Chief,I979 through May of I980, Plaintiff Petitioner Comsia unaware when removed from office. Edward Stokes, I979 to I98I Police Officer, also Police Chief replacing Mr. Devies, unaware of when to when. Paul Freer.. Police Officer, I979 through I98I. At present Sebring Police Chief. Hugh Taylor,Jr.... Building Inspector. All other participants, named and unnamed, known and unknown. Private Citizens... Allen Larkin... Alvin Karli... Robert Wilkin... Mrs Robert Wilkin.... Thomas Burkhart... Marlene Burkhart... John Smith, Former Council member, Sebring, Ohio.

I have now made a Motion to add Gov. Celeste and former Gov. James Rhodes as Parties DefendantRespondents.

PROOF OF SERVICE

I certify that I have mailed by regular U.S. mail to all parties interested the Special Writ of Certiorari, of which I hand delivered to the Clerks Office, of the United States Supreme Court Washington,D.C.... 4/23/86... I certify that I have mailed copys to all of Congress, to President Reagan, to the Ohio General Assembly, to the Ohio General Attorney, Gov. Celeste, Former Gov. RHodes... Even through I had sent the Clerks Office,4/10/86,the filing fee, the 40 copies... I was not aware that the Writ size was wrong for fil ling that way, until I approached the Clerks Office, 4/23/86,when he then gave me a sample size. He said there was no deadline on Special Writs, but that I should try, if I was going to, to get it in as close to a w week as I could, having the necessary document for Forma Pauperis filing... of which I entered,4/23/86. I then proceeded to send the new Writ ,proper size, the 5th day of May. of which I certify to be the same such same such writ of which I first mailed , stamped Feb /26/86, at which time was sent back by the clerk, "that I could not proceed so." The newly printed

Writ ,proper size was again rejected. This time the margin was not three forths around. I have here again redone this self same Writ, which was recieved 2/26/86 at your Clerks office. This writ is the same writ mailed to all of Congress, Ohio General assembly, President Reagan , all opposing defendants, Ohio Attorneys Generals office, and I will be again Hand delivering this self same Writ, May 14th /86 and can not foresee where it can be again rejected by the Clerk. This time since the Case is of such National importance , and I KNOW THAT THE JUDGES WILL BE CLOSING UP FOR THE SUMMER MONTHS, THAT IT WILL BE TOO LATE FOR THERE REVIEW, UNLESS IT IS PRESENTED TO THEM RIGHT AWAY, AND SINCE THERE WAS NOTHING WRONG WITH THE WRIT, STAMPED " 2/26/86, RECEIVED AT YOUR CLERKS OFFICE THEN, I AM REQUESTIONING THAT THIS BE PRESENTED AS SOON AS POSSIBIE.

PROOF OF SERVICE

I certify that I have mailed to all Council's for the Defendants, and to the Defendants not represented by Council... THIS 14th. day of MAY,1986, by regular UNITED STATES MAIL.

PROOF OF SERVICE CONTINUED:

David Kovach
800 State Off. Bldg.
615 West Superior Ave.
Cleveland, Ohio 44113
(216) 622-3030

Robert Bouffard
27 South Phelps St.
Youngstown, Ohio 44503
(216) 744-4497

Lauren E. Fitzpatrict
City Hall Buld.
Canton, Ohio
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moved left no Address

Copys to Committee in Congress designated to review Writs for Supreme Courts to review TO THE Ohio Attorneys Generals Office for Gov. Celeste and for Former Gov. James Rhodes.

President Reagan

Respectfully submitted
Marvine Alice Comsia
MARVINE ALICE COMSIA
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FILED

FEB 24 12 : 21

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

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FEB 26 1986
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

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APR 22 1986
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES FOR THE SIXTH CIRCUIT COURT

RECEIVED
APR 12 1986
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MARVINE ALICE COMSIA
BEHALF OF THE WHOLE

PLAINTIFF-PETITIONER

V

RUDY MAGHONE, ET AL

DEFENDANT-RESPONDANTS

CASE NO. C81-2532Y
85-4060 SIXTH CIRCUIT
COURT OF APPEALS

MOTION - REQUEST THAT THE SPECIAL WRIT OF CERTIORARI APPLICATION BE SUBMITTED TO THE SUPREME COURT JUDGES

ON THE CERTIORARI IT IS THE SIXTH CIRCUIT COURT... NOT THE NINTH

Now comes the Plaintiff-Petitioner, Marvine Alice Comsia, who Motion's a Petition on a request that the United States Supreme Court Judges veiw the Special Writ of Certiorari, one of National importance, due to the urgency of the subject matter. Petitioner does not agree with the Clerks adverse action.

This Case involves subject matter under 42 U.S.C. 1997 and a Grant Program established by the Developmentally Disabled Assistance and Bill of Rights Act of 1978....#5 of the Fourteenth Amendment and the Spending Power (The Fourteenth Amendment of the Case). See the Enclosed Laws.

Respectively submitted,

Copy to:

April 22, 1986

To Whom It May Concern:

Please be notified that on this date, Edward Schade requested the Ohio Sixth Circuit Court to mail proof of appeal made by Marvine Alice Comsia.

Witnessed by Joyce McIntosh (from Senator Laxalt's office).

Signed,

Joyce McIntosh

**Former Ohio Youth Services director is not indicted** 4-6-86

COLUMBUS, Ohio (AP) — The Associated Press reported erroneously Monday that James Rogers, former director of the Ohio Department of Youth Services, was under indictment on various charges.

Rogers, who was fired by Gov. Richard Celeste last April amid reports he allowed convicted felons to be hired without background checks and awarded contracts to friends or fictitious companies, has not been indicted.

Last May, Celeste turned over results of a state administrative investigation of Rogers to the Franklin County prosecutor's office. The Franklin County prosecutor's office is continuing its investigation with the Cuyahoga County prosecutor's office, Franklin County prosecutor's spokesman Bill Owen said Monday.

CPD 5-3-86

# Ex-staffers of Rhodes are probed

By MARY ANNE SHARKEY
STAFF WRITER

COLUMBUS — Former members of the Rhodes administration are under criminal investigation on allegations of misuse of state funds and client funds in the state probe of the mental retardation department, it was confirmed yesterday by investigators.

Former Gov. James A. Rhodes, who is running for the GOP nomination, has been campaigning on the abuses in the Ohio Department of Mental Health and Developmental Disabilities during the Celeste administration. "You can defeat Dick Celeste on one issue in this state — and that's mental retardation," Rhodes said Thursday at a campaign appearance.

Paul Ferrara, superintendent of the Ohio Bureau of Criminal Identification and Investigation, said his investigators were looking into the financial dealings of Westfield Services Management Inc., a company that contracted with the state to operate group homes for the mentally retarded. Rudy Magnone, director of mental retardation under Rhodes, and four other former members of the department, were connected with Westfield, as was a former assistant attorney general assigned to the retardation department.

"We're just starting to unravel this," Ferrara said. "The primary

**ELECTION '86**

focus of our investigation is on allegations of theft." He said his office had reports of patient abuse, "but it seems those are hard to substantiate." He said reports of abuse had been turned over to local police departments by his investigators.

David T. Williams, the governor's advocate for the retarded, said patients were abused at homes operated by Westfield in Columbus, Lebanon and Cincinnati. "It was significant. There were quality-of-care issues in those homes," he said. Williams said he did not want to go into detail because of the pending investigations.

Last year, the issue of Westfield's financial dealings with the state was raised by former State Rep. John A. Begala, who was fired as chief of staff for the mental retardation department by then-Director Minnie Fells Johnson. Gov. Richard F. Celeste asked for Johnson's resignation after a series in The Plain Dealer exposing abuses in the Northeast Ohio Developmental Center.

In a memo written last year, Begala claimed Westfield and other group home operators were taking advantage of the state's higher rate of payment to help establish group homes. He said it appeared that some

See RHODES, PAGE 12-A

# Rhodes

■ FROM PAGE 1-A

established group home operators were setting up new corporations or transferring licenses to confuse the state in its payment schedule.

Begala said 14 of 25 contracts that appeared suspect involved the same people, including Magnone. He said setting up different corporations "could be intended to thwart any action on the department's part to recover overpayments."

State Sen. David Hobson, R-10, of Springfield, who chaired a committee investigation of the department, said, "These guys knew how to work the system and they did." However, he said his committee found there were problems during the Rhodes administration, "but not to the extent there were under Minnie Fells Johnson. This was tremendously greater than before (under Rhodes)."

He said in both administrations "mental retardation was never a high priority. We've tried to clean it up and I think now everybody has tried to work together to do so."

The Cincinnati Post reported yesterday that investigators concluded Westfield was a front for the Community Assistance Corp. and Magnone was first vice president of the corporation.

Also identified by the newspaper as being former members of the Rhodes administration and connnected to the Community Assistance Corp. were: Ray Anderson, former mental retardation deputy director; Al Soforenko, former superintendent of Orient Developmental Center; Clayton (Bud) Morgan, former chief of staff for the retardation deparment, and Normand Tremblay, former deputy commission for mental retardation.

David G. Latanick, who was assigned to the department by the Ohio attorney general during the previous administration, was secretary and general counsel to the Community Assistance Corp.

James A. Duerk, spokesman for the Rhodes' campaign, said yesterday, "In no way does the record of the Rhodes administration compare to the record of the Celeste administration in beatings, rapes, killings and malnutritions of mentally retarded patients. It's shocking to compare it."

Duerk said that if former members of the Rhodes administration "are doing anything illegal, then they should be prosecuted."

Brian Usher, Celeste press secretary, said his office would not comment "because there is an ongoing investigation." However, Gerald Austin, Celeste's campaign manager, said he expected Rhodes would come under fire on this issue and others.

"Every issue Rhodes has, he also has a past which will come back to haunt him. There ain't no free lunch for Jim Rhodes this time," Austin said.

Hamilton County Commissioner Robert A. Taft II, Rhodes' running mate, is featured in a current campaign ad berating the Celeste administration for its treatment of the mentally retarded. The Rhodes-Taft ads attack Celeste as "callously insensitive" to the group homes scandal of 1985 and say, "It's time to restore decent care for the mentally retarded."

Austin said, "If you notice in the ad, it's Bob Taft." He said that was because the department had problems during Rhodes' administration.

The Associated Press reported that GOP gubernatorial candidate Sen. Paul E. Pfeifer, R-26, of Bucyrus, at a news conference in Columbus, said the newspaper story was further evidence "there were plenty of problems" with Rhodes' last administration.

For the past several weeks, Pfeifer has been insisting that Rhodes should not be nominated because the former governor could not solve Ohio's problems in the last eight years of his administration.

# State froze him out, whistleblower says

5-11-86 C.P.D

By GARY WEBB
PD BUREAU

COLUMBUS — A Marion architect who alerted authorities to an alleged shakedown on a state construction contract two years ago says his firm has been cut off from receiving state contracts since.

"Frankly, it's disgusting," said architect James H. Burris. "We really got snookered in the whole deal. We did what we think was right, and yet it has cost us the opportunity since that time to get any state work. And we know damn well that we won't."

Burris said that since he reported the alleged solicitation in early 1984, his firm, Burris, Lockwood and Tangeman Inc., not only lost the $81,000 contract for which the alleged kickback was to have been paid, but hasn't been invited to interview for any state work since.

Before the state awards an architectural contract, the state architect, with the approval of the deputy director of the Department of Public Works, puts together a "short list" of architects to be interviewed for the proposed job. The final selection is made from among those on the list.

Records show Burris' company, which has done business with the state

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## Froze

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off and on for 20 years, has not made a single short list since the incident was reported, despite applying for more than 20 state jobs.

Former State Architect Lee Martin, who was asked to resign in 1985 and has been openly critical of the way public works contracts have been let under the administration of Gov. Richard F. Celeste, said he was not surprised that Burris' company had been cut off.

"It'll be a cold day in hell before he (Burris) ever gets put on another short list," Martin said. "He and I will probably get a state job about the same time."

Martin, a Republican candidate for the 15th District State Senate seat, was state architect at the time of the alleged shakedown and said he became aware of it shortly after it was reported. Martin said Burris' report to the FBI prompted a federal investigation into the way the administration awarded architecture and engineering contracts.

reimbursed, but we do what we think is right, and we get kicked."

Burris' firm was finishing a $1.4 million job at the Marion County juvenile detention center in early 1984 and became caught in a dispute between one of the contractors, Cuyahoga Piping and Sheet Metal Inc., and the state architect's office, which was refusing to approve payment on some change orders Cuyahoga Piping had submitted.

Cuyahoga Piping of East Cleveland is owned by James C. Lewis, a friend of former Youth Services Director Rogers. Youth Services had contracted for the work at the Marion detention center and investigators have linked Rogers and Lewis to thousands of dollars in questionable payments made under Youth Services contracts.

Burris said his company ended up approving the additional payments to Lewis' company simply to get the trouble-plagued project completed, and he said his partner, David Lockwood, was immediately offered another Youth Services contract by Rogers as a favor for helping Lewis out.

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As a result, Martin said, Burris' company immediately became marked by the Department of Public Works as an enemy of the administration.

"He obviously was targeted as anti-administration. He was no longer a team player," Martin said. Martin said no one ever told him that directly, but he said no one had to; he said it was understood that Burris, Lockwood and Tangeman was not to be considered for any more state work.

"Quite frankly, I knew who was a friend of the administration and who wasn't, and I didn't bother putting people on the list who weren't friends of the administration because I knew they would just get axed off," Martin said.

Burris said he heard the same thing from former Public Works Deputy Director Carl Wilson, who was a classmate of Burris and gave him the word unofficially.

"He said, in so many words, to quit bothering (to apply for jobs), that we were wasting our time," Burris said. Wilson, who has retired from state government and is now living in Dayton, did not return several phone messages left with his wife.

Gretchen Hull, a spokesman for the Department of Public Works, said the reason Burris' firm hadn't made any short lists was because there had not been much state work going on in the Marion bid district, but Hull conceded that firms were not confined to working only in their bid district.

Hull also acknowledged that another architectural firm in the Marion bid district had been on 11 short lists and had won two state contracts in the same time period, but she said the other firm was considerably larger than Burris, Lockwood and Tangeman.

"You're talking about apples and oranges," Hull said.

The project Rogers offered the firm was for $610,000 in renovations to Youth Services' Scioto Village facility. Burris said the architect's fees for the project were listed at $61,000, which "we considered ridiculously high. It was about four times the going rate."

On March 20, 1984, Rogers wrote former State Architect Martin and told him he wanted Burris' firm assigned the contract, records show. Shortly thereafter, Burris said he received a call from a Youth Services deputy director, who wanted to meet with him "and explain the conditions under which we would get the contract."

Burris said he met the woman March 23 at a bar in Marion and said she "didn't beat around the bush. She said Rogers wanted a $6,000 contribution. I told her we'd have to think about it."

The next day, Burris said, the deputy director called back and wanted to know what their decision was. He said he told her the only way the firm would consider making the payment was if it was a political contribution to the Democratic Party.

Burris said he was told that wasn't what Rogers had in mind.

"She said he wants a direct payment in the amount of $6,000 to himself, not to Celeste or the party," Burris said. "We were supposed to make the check out in the name of a third party and that Rogers would explain everything to us when we met him for lunch that day."

But Rogers talked about football and Woody Hayes and never said a word about the payoff," Burris said. When the woman called back and Burris explained the lunchtime conversation to her, he said she replied, "Well, he wants it."

"I told her we weren't interested in getting involved in that kind of a deal," Burris said. "We never heard another word about the project."

The deputy director told Burris mistook a warning for a shakedown.

"I told him that he didn't know Rogers like I did and that if he expected to get a contract, he was going to have to come up with some money, either in the form of a campaign contribution or a payoff," she said. "I never tried to get Burris to pay any money. That would be extremely stupid."

My Attorney, Michael Donovan/ State Hearing on Comsia Home, 1984/ said he had three Homes under Ohio Youth Commission.